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C O N F I D E N T I A L SECTION 01 OF 03 TAIPEI 000623

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TAGS: PGOV KJUS KCRIM PREL TW CH
SUBJECT: TAIWAN JUDICIAL SYSTEM: RELIABLE BUT ROOM FOR

REFORM

REF: TAIPEI 1690

Classified By: AIT Director Stephen M. Young
for reasons 1.4(b) and (d).

¶1. (C) Summary: Taiwan's judicial system is fundamentally reliable and independent, say legal scholars, practitioners, and officials, but there is room for reform - as evidenced by the controversy surrounding the prosecutions of former president Chen Shui-bian and other Democratic Progressive Party (DPP) officials. Structural and procedural measures will help ensure fairness and due process. Reform advocates see the heightened public interest and debate as a means of pushing additional improvements to the system, such as limiting pre-indictment detention. End Summary.

Structural Measures Ensure Judicial Independence

¶2. (C) In conversations with AIT and in public statements, non-partisan legal scholars, NGOs and officials express confidence that structural features of Taiwan's judicial system help protect the independence of the judiciary and ensure due process. Taiwan's three-tier court system, the reliance on three-judge panels in major criminal cases, and random case assignments limit variations in sentencing and mitigate personal biases or inexperience that may influence judgments. Moreover, Taiwan judges and prosecutors are not politically appointed. They are civil servants who typically pass a combined exam after graduating from law school. Those who pass this exam complete two years of classroom and practical training before choosing whether to become judges or prosecutors. Procedural reforms instituted over the past six years have also strengthened the rights of the accused by incorporating elements of the U.S. adversarial system. Most significantly, suspects have the right to have legal counsel present during questioning, to have interrogations recorded, to be provided with legal counsel if indigent, to cross-examine witnesses, and exclude hearsay testimony.

Active Advocacy Encourages Continued Reform

¶13. (C) Taiwan has a history of more than twenty years of successful structural and procedural reforms of its judiciary. This pattern of reform continues today with lively debate over which areas could benefit next from public demands for reform. During the Lee Teng-hui administration in the late 80s, the movement for judicial reform, whose members included lawyers, judicial officers, scholars, and officials, began in earnest. Eventually, this led to the creation of the Judicial Reform Foundation (JRF) and other reform-minded organizations, whose goals were to increase judicial independence and public confidence. Experts and academics agree that by the time of the National Judicial Reform Conference in 1999, judges and prosecutors could, and did, freely assert their judicial independence and that many procedural reforms over the past ten years have increased protections of defendants' rights. There is disagreement, however, over how effective reforms have been in increasing the efficiency of the courts. Many say Taiwan's current "modified" adversarial system, combining elements of the Japanese inquisitorial system with elements of the U.S. adversarial system, requires continued reform to fully meet its obligations to the people.

¶14. (C) One of the most visible targets for reform is pre-indictment detention. While pre-indictment detention is a common feature of inquisitorial systems in Europe, Latin America, Korea, and Japan, many legal professionals, reform advocates, and even former judicial officials agree that the use of pre-indictment detention should be limited. According

TAIPEI 00000623 002 OF 003

to Taiwan's Code of Criminal Procedure, a prosecutor may request the court to remand a potential defendant to detention (before being indicted, or charged) if the charges being sought carry a sentence of five years or more, there is a risk of flight, or there is concern that the suspect may tamper with witness testimony or evidence. The prosecutor is required to demonstrate probable cause and a judge must approve the request. Pre-indictment detention is limited to two months at which point the court may extend detention for another two months, if necessary. JRF President Huang told AIT that his organization plans to push for a change in pre-indictment detention from this two-plus-two formulation to something more in line with Japan's pre-indictment detention of ten days plus ten days. Other reforms JRF will seek are an increase in public accountability for prosecutors, particularly with regard to press leaks, and the passage of legislation regulating judicial officers, such as the Judges Law currently before the Legislative Yuan (LY).

Chen Case Highlights Concerns

¶15. (C) The corruption trial of former President Chen Shui-bian (the first president to face prosecution after leaving office) and the prosecutions of several former and current DPP officials, have prompted intense media scrutiny of the reliability and fairness of Taiwan's judicial system (ref A). Critics charge that political interference in the judicial process has led to a higher number of DPP prosecutions (vice KMT) since President Ma Ying-jeou took office in May 2008. Chen's trial has also brought international attention to issues such as pre-indictment and pre-trial detention, as well as prosecutorial leaks and misconduct, accountability and transparency in judicial procedures. While reform advocates such as the Judicial Reform Foundation and the Legal Aid Foundation note that some of these issues are longstanding and not particular to the Chen case, they add that the media spotlight on Chen's trial has prompted a welcome public review of the areas where Taiwan's judicial system could benefit from further reform.

Political Interference vs. Political Bias

¶6. (C) Legal scholars and practitioners agree it is hard to prove political interference by the KMT government in the former President's case, particularly since the investigation into his alleged misconduct began while Chen was in office. Some scholars and legal experts note that, while political interference by the KMT government in the judicial system is unlikely, political bias by individual judges and prosecutors remains possible. The ability of such bias to influence judicial decisions cannot be excluded, but should be treated as individual misconduct and disciplined or prosecuted accordingly. Such individual bias, say these scholars, is common to all legal systems. Ultimately, the use of three-judge panels for important cases and Taiwan's three-level appeal system mitigate against the risk of political interference or bias, they note.

Freedom of Press Allows Open Debate, Exerts Pressure

¶7. (C) Reform advocates hope heightened public interest in the judicial process will help further their push for reform. Certainly, freedom of speech and press on Taiwan is well-developed and the active media here provides a venue for the vibrant and often contentious debate over judicial independence and political influence on the judicial process. At times, the media can become part of the problem, however. While the media is active, it can also be irresponsible, with local papers and television talk shows more interested

TAIPEI 00000623 003 OF 003

in finding sensational stories than fact-checking their findings. Similarly, the media can be aggressive and may not respect personal or professional boundaries in pursuit of a story. Prosecutors often feel unable to restrict media access for fear of criticism in the press. Prosecutors and judges acknowledge that strong criticism from media commentators or negative coverage can generate public pressure on judicial officials, though there is no clear evidence of influence on court judgments. Perhaps of greater concern are allegations that, as happens at times in the United States, parties with access to confidential information in high-profile trials selectively leak it to the media to influence public opinion.

Comment

¶8. (C) It is important to bear in mind that the judicial system that Chen supporters and some DPP officials claim is rife with pro-KMT personnel using their offices to persecute political opponents is the same one that has prosecuted key KMT members in recent years. For example, current President Ma Ying-jeou was tried for budget abuses, KMT legislator Liao Cheng-chin for vote-buying, and Taichung City Council Speaker Chang Hung-nien for corruption. Perhaps more importantly, it is the same institution that helped ensure political stability in the aftermath of the 2004 elections, ultimately confirming Chen Shui-bian's re-election and striking down as unconstitutional the KMT-controlled legislature's March 19 Shooting Incident Truth Commission Statute. In fact, current calls for legal reform tend to focus not so much on ensuring the independence of the judicial process, but on constraining the powers of judges and prosecutors in order to prevent abuse. When pressed, most independent observers recognize the judicial system as an imperfect but improving and generally reliable and independent institution.

YOUNG